

REMARKS

Claims 1, 3, 4, 6, 7, 9, 11-14, 16, and 18 are pending in the application. Each of these claims stands rejected under 35 U.S.C. §101 as directed to non-statutory subject matter. All of the claims have been indicated as allowable over the prior art once the rejection under 35 U.S.C. §101 has been resolved. Reconsideration of the above-identified application in view of the above amendment and the following remarks is respectfully requested.

I. Summary of Interview

Applicant's representative notes with appreciation the courtesy extended by the Examiner in the interview granted February 6, 2008. Possible amendments to overcome the current rejection under 35 U.S.C. §101 were discussed, and while no specific agreement was reached, the Examiner's comments were helpful in preparing this Amendment.

II. Rejection of Claims 1, 3, 4, 6, 7, and 9 under 35 U.S.C. §101

Claim 1 has been amended to recite a computer readable medium, which is understood to be functional descriptive material, and thus presumptively patentable subject matter. Claims 3, 4, 6, and 7 have been amended to remain consistent with claim 1. The Office Action states that since the claimed limitations drawn toward transmitting a data packet via a signal are non statutory in view of the holding by the Federal Circuit in In re Nuijten, 500 F.3d 1346 (Fed. Cir., 2007), that an encoded

signal, separate from a storage medium, is not statutory subject matter under 35 U.S.C. §101. It is respectfully submitted that the reading of Nuijten advanced in the Office Action is overbroad.

Nuijten dealt specifically with the subject of claiming an encoded signal independent of a storage medium. It will be noted that the claims in Nuijten (1-13) drawn to embedding data into a signal and the claim (15) drawn to a signal stored in a computer readable medium were allowed by the USPTO. As stated in Nuijten, "The claims whose disallowance Nuijten appeals are not traditional step-by-step process claims, nor are they directed to any apparatus for generating, receiving, processing, or storing the signals. As mentioned above, such claims have been allowed." Nuijten at 1351. It will be noted that despite having the authority the review any of the allowed claims *de novo*, See, e.g., AT&T Corp. v. Excel Commc'ns, Inc., 172 F.3d 1352, 1355 (Fed. Cir. 1999), the Nuijten court declined to invalidate the claims drawn to generating and storing the signal. Clearly, it was not the intent of the Nuijten court to disqualify systems and methods for generating a signal, a category encompassing numerous varieties of modems, servers, excitors, antenna, and optical transmission devices, as statutory subject matter.

Claims 1, 3, 4, 6, and 7 recite a computer readable medium containing computer executable instructions for transmitting data packets between networks. Claim 9 recites a system with devices for performing a similar function. It is

respectfully submitted that the ruling in Nuijten was limited to claims drawn to signals, not claims drawn to systems and methods for producing, transmitting, receiving, or manipulating systems. Claims 1, 3, 4, 6, 7, and 9 do not claim a signal in this manner, but rather computer instructions and devices for generating, transmitting, and receiving signals. Further, it will be appreciated that even the signal in Nuijten was statutory when stored on a computer readable medium, as the claim 15 was allowed by the USPTO and, at least in dicta, approved by the court. It is thus respectfully submitted that claims 1, 3, 4, 6, 7, and 9 recite statutory subject matter under 35 U.S.C. §101.

III. Rejection of Claim 18

Claim 18 has been amended to recite a system comprising first and second application nodes and first and second gateway nodes. Each of the first and second application nodes comprises at least one computer and each of the first and second gateway nodes comprising one of a communication hub and a computer.

The Office Action states that claim 18 recites non-functional descriptive material as a computer program process. As amended, it is respectfully submitted that claim 18 defines a number of individual machines, specifically computers executing software instructions, and describes the capabilities of these machines, presumably provided by executable instructions stored on an appropriate computer readable medium, recited as interactions between these various machines. It is thus

respectfully submitted that this represents patentable subject matter under 35 U.S.C. §101. With regards to the rejection in view of In re Nuijten, claim 18 is drawn to a system for transmitting and receiving signals, not the signal itself. It is thus respectfully submitted that the system of claim 18 is statutory even in light of the ruling in Nuijten, as described more thoroughly above.

IV. Rejection of Claim 16

The Office Action rejections claim 16 under 35 U.S.C. §101, stating that claim 16 recites software per se. It is respectfully submitted, however, that the various elements of claim 16 are recited in a “means plus function” format in accordance with 35 U.S.C. §112 ¶6, and should be interpreted “to cover the corresponding structure described in the specification and equivalents thereof,” as stated in the statute. It is thus respectfully submitted that the first, second, and third transmitting means recited in claim 16 include not only the software utilized at each transmitting means, but the hardware components recited in the specification. Specifically, the first, second, and third means should be read to include the first, second, and third devices recited in the description of FIG. 1, which are each described as one of a communications network or sets of one or more computers. See pg. 6, line 3 – pg. 7, line 7 of the specification. It will be appreciated that the function of each of the first, second, and third devices corresponds with the respective transmitting functions of the first, second, and third means recited in claim 16. See *Id.* It is thus respectfully submitted

that the system of claim 16 recites hardware in combination with software and is statutory.

Claim 16 has also been rejected in view of In re Nuijten as drawn to a signal. Claim 16 is drawn to a system for transmitting and receiving signals, not the signal itself. It is thus respectfully submitted that the system of claim 16 is statutory even in light of the ruling in Nuijten, as described more thoroughly above.

Allowance of the subject application is respectfully requested.

Please charge any deficiency or credit any overpayment in the fees for this election to our Deposit Account No. 20-0090.

Respectfully submitted,



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